

REMARKS/ARGUMENTS

Claims 6-9, 16 and 17 are pending. Claims 6 and 16 are amended. Support for the amendments can be found in paragraph [0042] of the as-filed specification. No new matter is added by any of the amendments. Reconsideration of the application is respectfully requested.

Applicants do not concede that the originally filed claims are not patentable over the art cited by the Examiner, as the present claim amendments and cancellations are included only to facilitate expeditious prosecution. Applicants respectfully reserve the right to pursue these and other claims in one or more continuations and/or divisional patent applications.

I. 35 U.S.C. § 101

The examiner has rejected claims 6-9,16 and 17 under 35 U.S.C. § 101 as being directed towards non-statutory subject matter. This rejection is respectfully traversed.

The Examiner states the following:

Claims 6,7,8,9,16 and 17 are directed to non-statutory subject matter. Based on Supreme Court precedence see *Diamond v Diehr* 450 US 175,184 (1981); *Parker v. Flook*, 437 US 584,588,n. 9 (1978); *Gottschalk v Benson*, 409 US 63, 70 (1972); *Cochrane v Deener*, 94 US 780, 787-88 (1876) a 101 process must (1) be tied to another statutory class (such as an apparatus) or transform underlying subject matter (such as an article or materials) to a different state or thing. Since neither of these requirements is met by the claim the claim is rejected as being directed to non-statutory subject matter.

Office Action dated 04/07/09, pp. 2-3.

The Applicants have amended the claims specifically tying the claimed method to another statutory category. Withdrawal of the rejection is therefore respectfully requested.

II. 35 U.S.C. § 103, Obviousness

The examiner has rejected claims 6-9,16 and 17 under 35 U.S.C. § 103 as being unpatentable over Fox (U.S. Pat. No. 6,421,781), hereinafter, Fox, in view Applicant's admitted prior art. This rejection is respectfully traversed.

With regard to claim 6, the Examiner states the following:

Regarding claim 6. Fox discloses a commodity purchasing method through a network, comprising the steps of:
receiving a connection request from a device (FIG 2);

determining whether the connection request includes an identifier (FIG 3),
wherein the identifier corresponds to an identification code of a cellular phone (FIG 3) and
wherein the identifier identifies that the connection request is from a cellular phone (FIG 3, item 302);
in response to determining that the connection request includes the identifier, performing the following steps;
storing the identifier and user status information associated with the identifier in a database contained in a system for receiving the connection request (FIG 3); and
executing session control using the identifier and the user status information (col 2, lines 23-65);

As Observed by the Board in Appeal 2007-1930:
"Fox discloses a server, such as device 202, which provides information accessible to other computing devices on the Internet 104 (Fox, col.5, lines 27-29). Fox discloses that other such computing devices connected to the Internet can be desktop personal computers (Fox, col. 3, line 55). It would appear that the server 202 provides information accessible to both computers and mobile devices, and thus receives connection requests from both types of devices.

APA describes using history information, i.e., a cookie, to effect session control where the connection request involved is not from a mobile device (instead, a computer) as required by claims 6 and 16. (Specification 3:5-9)

As to the limitation in claims 6 and 16 of "determining whether the connection request includes an identifier, wherein the identifier corresponds to an identification code of a cellular phone and wherein the identifier identifies that the connection request is from a cellular phone," Fox discloses:

Referring to the table in FIG. 3, a subscriber 10 list 302 maintains a list of subscriber IDs of the mobile devices... " (Fox col. 6, ii. 29-30) The URLs representing the information subscribed to by the user are grouped and maintained in URL table 306. It can be appreciated that subscriber 10 list 302 generally maintains a plurality Of subscriber IDs, each corresponding to one mobile device... (Fox, col. 6, 11.43-49).

Fox would appear to disclose determining an identifier (10) associated with a mobile device as required by claims 6 and 16 because, in Fox, the IDs in list 302 are grouped together as mobile devices, and any connection request using an 10 from this group (302) would be known or identified by the system as being associated with a mobile device based on the group classification. "

Accordingly, it would have been obvious to one of ordinary skill in the art to have provided the combination of Fox and APA. All of the recited steps are shown by the combination of Fox and APA and there is no evidence of unpredictable results. Under these circumstances, " [t]he

combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results." *KSR Int'l Co. v. Teleflex Inc.*! 127 S.Ct. 1727, 1739 (2007)."

Fox teaches determining if an identifier is present in the request and if there is no identifier, determining if there is some other string from the notification request that can serve as the identifier (col 10, lines 40-47). As stated above, APA describes using history information, i.e., a cookie, to effect session control where the connection request involved is not from a required by claims 6 and 16. (Specification 3:5-9). It would have been obvious to a person having ordinary skill in the art to use a cookie provided with the notification to effect session control if an identifier was not provided indicating that the call is from a cellular phone, because the use of cookies to establish identity of a user was an efficient manner of authentication commonly used by programmers and would have therefore been obvious to try as an option when searching for some means of identification in the request.

Office Action dated 04/07/09, pp. 3-6.

The Examiner bears the burden of establishing a *prima facie* case of obviousness based on prior art when rejecting claims under 35 U.S.C. § 103. *In re Fritch*, 972 F.2d 1260, 23 U.S.P.Q.2d 1780 (Fed. Cir. 1992). The prior art reference (or references when combined) must teach or suggest all the claim limitations. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). In determining obviousness, the scope and content of the prior art are... determined; differences between the prior art and the claims at issue are... ascertained; and the level of ordinary skill in the pertinent art resolved. Against this background the obviousness or non-obviousness of the subject matter is determined. *Graham v. John Deere Co.*, 383 U.S. 1 (1966). "Often, it will be necessary for a court to look to interrelated teachings of multiple patents; the effects of demands known to the design community or present in the marketplace; and the background knowledge possessed by a person having ordinary skill in the art, all in order to determine whether there was an apparent reason to combine the known elements in the fashion claimed by the patent at issue." *KSR Int'l. Co. v. Teleflex, Inc.*, No. 04-1350 (U.S. Apr. 30, 2007). "Rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *Id.* (citing *In re Kahn*, 441 F.3d 977, 988 (CA Fed. 2006)).

The Applicants have amended claim 6 as follows:

6. A commodity purchasing method through a network, comprising the steps of:

receiving at a gateway, a connection request from a cellular phone;
responsive to receiving the connection request from the cellular phone, adding by the gateway an identifier to the connection request, wherein the identifier corresponds to an identification code of the cellular phone and wherein the identifier identifies that the connection request is from the cellular phone;

responsive to adding the identifier to the connection request, forwarding the connection request to an electronic commerce server;

determining by the electronic commerce server whether the connection request includes the identifier;

in response to determining that the connection request includes the identifier, performing by the electronic commerce server the following steps:

storing by the electronic commerce server the identifier and user status information associated with the identifier in a database contained in a system for receiving the connection request;

executing session control by the electronic commerce server using the identifier and the user status information; and

in response to determining that the connection request does not include the identifier, executing session control by the electronic commerce server for the device using history information that is communicated between the system and the device.

II.A. The combination of references does not disclose “receiving at a gateway, a connection request from a cellular phone”

The combination of references does not make obvious amended claim 6 because the combination of references does not disclose the claim 6 feature of “receiving at a gateway, a connection request from a cellular phone.”

Fox discloses a secure push server. The push server is used for sending notifications to different wireless clients on different wireless networks. The push server allows information service providers to send notifications to the wireless clients. The information service providers initiate a request to the push server that includes updated information. The request also includes a certificate from the information service provider. The push server authenticates the request from the information service provider by verifying the certificate. The push server also determines if the certificate was issued from an acceptable certificate authority by examining an acceptable certificate authority list. Finally, the push server checks the content of the notification to be sure it does not interfere with other information service providers. After performing the security checks, the push server processes the notification request.

As interpreted by the Examiner and the Board, the “identifier” of Fox is received by the push server when a client subscribes to the pushed notifications provided by the push server. As interpreted by the Examiner and the Board, the connection request is received from the mobile device at the push server. That is, Fox does not disclose the claim 6 feature of “receiving at a gateway, a connection request from a cellular phone.”

Furthermore, the admitted prior art does not overcome this deficiency of Fox. Applicant’s disclosure is relied upon to disclose history information, i.e., a cookie, to affect session control where the connection request involved is not from a mobile device. Applicant’s admitted prior art does not encompass the claim 6 feature of “receiving at a gateway, a connection request from a cellular phone.”

Because the combination of references does not disclose the claim 6 feature of “receiving at a gateway, a connection request from a cellular phone,” the combination of references does not make obvious amended claim 6. Withdrawal of the rejection is therefore respectfully requested.

Independent claim 16 is amended to recite features similar to those found in claim 6. By virtue of reasons similar to those presented above in regard to claim 6, Therefore, the combination of references does not make obvious claims 8 and 15 under 35 USC 103(a). Withdrawal of the rejection is therefore respectfully requested.

Claims 7-9 depend from claim 6. Claim 17 depends from claim 16. By reasons similar to those presented above, and by virtue of their dependence from the respective independent claims, the combination of references does not disclose each feature of claims 7-9 and 17. Therefore, the combination of references does not make obvious claims 7-9 and 17 under 35 USC 103(a). Withdrawal of the rejection is therefore respectfully requested.

II.B. The combination of references does not disclose “responsive to receiving the connection request from the cellular phone, *adding by the gateway an identifier to the connection request*, wherein the identifier corresponds to an identification code of the cellular phone and wherein the identifier identifies that the connection request is from the cellular phone”

The combination of references does not make obvious amended claim 6 because the combination of references does not disclose the claim 6 feature of “responsive to receiving the

connection request from the cellular phone, *adding by the gateway an identifier to the connection request*, wherein the identifier corresponds to an identification code of the cellular phone and wherein the identifier identifies that the connection request is from the cellular phone.”

As interpreted by the Examiner and the Board, the “identifier” of Fox is received by the push server when a client subscribes to the pushed notifications provided by the push server. Fox is silent with respect to any gateway that facilitates the connection of a cellular device to the push server. Therefore, because Fox is silent in this regard, Fox cannot disclose any action that is affirmatively performed by the gateway, such as appending an identifier to the connection request.

Furthermore, the admitted prior art does not overcome this deficiency of Fox. Applicant’s disclosure is relied upon to disclose history information, i.e., a cookie, to affect session control where the connection request involved is not from a mobile device. Applicant’s admitted prior art does not encompass the claim 6 feature of “responsive to receiving the connection request from the cellular phone, *adding by the gateway an identifier to the connection request*, wherein the identifier corresponds to an identification code of the cellular phone and wherein the identifier identifies that the connection request is from the cellular phone.”

The combination of references disclose the claim 6 feature of “responsive to receiving the connection request from the cellular phone, *adding by the gateway an identifier to the connection request*, wherein the identifier corresponds to an identification code of the cellular phone and wherein the identifier identifies that the connection request is from the cellular phone.” Therefore, the combination of references does not make obvious amended claim 6 under 35 USC 103(a). Withdrawal of the rejection is therefore respectfully requested.

Independent claim 16 is amended to recite features similar to those found in claim 6. By virtue of reasons similar to those presented above in regard to claim 6. Therefore, the combination of references does not make obvious claims 8 and 15 under 35 USC 103(a). Withdrawal of the rejection is therefore respectfully requested.

Claims 7-9 depend from claim 6. Claim 17 depends from claim 16. By reasons similar to those presented above, and by virtue of their dependence from the respective independent claims, the combination of references does not disclose each feature of claims 7-9 and 17. Therefore, the combination of references does not make obvious claims 7-9 and 17 under 35 USC 103(a). Withdrawal of the rejection is therefore respectfully requested.

III. Conclusion

No new matter has been added by these amendments. The Examiner is invited to call the undersigned at the below-listed telephone number if in the opinion of the Examiner such a telephone conference would expedite or aid the prosecution and examination of this application.

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Respectfully submitted,

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